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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H-2008-628

WILLIAM PINEDA
815 West Harvard Place
Ontario, CA 91762

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about September 23, 2008, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner License from WILLIAM PINEDA (Respondent). On or about September 2, 2008, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on January 7, 2009.

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JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732 of the Code states:

"(a) The board shall investigate an applicant for a license, before a license is issued, in order to determine whether or not the applicant has the qualifications required by this chapter.

"(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"...."

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

"...."

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or

1 attempting to violate, directly or indirectly, or assisting in or abetting the violation
2 of, or conspiring to violate any provision or term of this chapter or of any provision
3 of Division 2 (commencing with Section 500).

4 “....”

5 8. Section 3750.5 of the Code states:

6 "In addition to any other grounds specified in this chapter, the board may
7 deny, suspend, or revoke the license of any applicant or license holder who has done any
8 of the following:

9 "(a) Obtained or possessed in violation of law, or except as directed by a
10 licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or
11 furnished or administered to another, any controlled substances as defined in Division 10
12 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug
13 as defined in Article 2 (commencing with section 4015) of Chapter 9 of this code.

14 "....”

15 9. Section 3752 of the Code states:

16 “A plea or verdict of guilty or a conviction following a plea of nolo
17 contendere made to a charge of any offense which substantially relates to the
18 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
19 a conviction within the meaning of this article. The board shall order the license
20 suspended or revoked, or may decline to issue a license, when the time for appeal
21 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
22 order granting probation is made suspending the imposition of sentence,
23 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
24 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
25 setting aside the verdict of guilty, or dismissing the accusation, information, or
26 indictment.”

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10. California Code of Regulations, title 16, section 1399.370, states:

“For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

“(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Act.

“ ”
...

COST RECOVERY

11. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

12. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

13. Section 3753.1 of the Code states:

"(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation."

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1 **CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of a Crime)**

3 14. Respondent's application is subject to denial under sections 3732,
4 3750, subdivision (d), and 3750.5, subdivision (a), of the Code, and California Code of
5 Regulations, title 16, section 1399.370, subdivision (a), in that he was convicted of a crime
6 substantially related to the qualifications, functions, and/or duties of a respiratory care
7 practitioner. The circumstances are as follows:

8 (a) On or about May 20, 2005, respondent was observed by officers
9 from the San Bernardino County Sheriff's Department standing outside his vehicle at a
10 stop sign with his driver's door open at approximately 2:00 a.m. Respondent returned to
11 his vehicle and drove away as officers followed. Officers initiated a traffic stop of
12 respondent. Upon approach of respondent, officers observed signs that respondent was
13 intoxicated. Respondent consented to a search of his vehicle. During the search, 48
14 tablets of Vicodin were found in his vehicle, along with bottles of Viagra and Levitra
15 labeled for other people. Officers also found a small quantity of marijuana. Respondent
16 was arrested for violations of Health & Safety Code § 11378, possession of a controlled
17 substance for sale, §11379, transportation, sale, or distribution of a controlled substance,
18 and §11350, possession of a controlled substance.

19 (b) On or about July 22, 2005, a Complaint was filed in the Superior
20 Court of California, for the County of San Bernardino, case number FWV035223,
21 charging respondent with possession of a controlled substance [Health & Safety Code, §
22 11350, subdivision (a)] and possession of a controlled substance [Business & Professions
23 Code, § 4060].

24 (c) On or about September 7, 2005, pursuant to a plea bargain,
25 respondent pled guilty to the amended charge of possession of a controlled substance in
26 violation of Health and Safety Code section 11377, subdivision (a). Respondent was
27 placed on supervised probation for 2 years with various terms and conditions.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 1. Denying the application of William Pineda for a Respiratory Care Practitioner’s License;
- 2. Directing William Pineda to pay the Respiratory Care Board of California the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and,
- 3. Taking such other and further action as deemed necessary and proper.

DATED: March 9, 2009

Original signed by Colleen Whitestine for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant